

PT 00-24

TAX TYPE: PROPERTY TAX

ISSUE: CHARITABLE OWNERSHIP/USE

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**FAMILY GUIDANCE
CENTERS, INC.
APPLICANT**

v.

**DEPARTMENT OF REVENUE
STATE OF ILLINOIS**

**No: 98-PT-0116
(97-16-0660)**

**Real Estate Exemption
for 1997 Tax Year**

**P.I.N.S: 17-04-444-004
17-04-444-005
17-04-444-006
17-04-444-010**

Cook County Parcels

**Alan I. Marcus¹
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Messrs. Thomas Goedert and Terry Engel of Deutsch, Levy & Engel on behalf of Family Guidance Centers (hereinafter the "applicant").

SYNOPSIS: This proceeding raises the limited issue of whether real estate identified by Cook County Parcel Index Numbers 17-04-444-004, 17-04-444-005, 17-04-444-006 and 17-04-444-010 (hereinafter collectively referred to as the "subject property") were "actually and exclusively used for charitable or beneficent purposes" during the 1997 assessment year, as required by Section 15-65 of the Property Tax Code, 35 ILCS 200/1-1 *et seq.*

The controversy arises as follows:

Applicant filed a Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals on March 13, 1998. Dept. Ex. No. 1. The Board reviewed applicant's complaint and recommended to the Illinois Department of Revenue (hereinafter the "Department") that "no action" be taken thereon. *Id.* After reviewing the Board's recommendation, the Department issued a determination denying the requested exemption, on grounds that the subject property is not in exempt use, on October 22, 1998. Dept Ex. No. 2. Applicant thereafter filed a timely appeal as to this denial and subsequently presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the Department's exemption denial be affirmed.

FINDINGS OF FACT:

A. Preliminary Considerations and Description of the Subject Property

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Group Ex. No. 1, and Dept. Ex. No. 2.
2. The Department's position in this matter is that the subject property is not in exempt use. Dept. Ex. No. 2.
3. The subject property is located at 306-322 W. Chicago Ave, Chicago, IL 60610 and improved with a 12,116 square foot building. *Id.*; Applicant Ex. No. 1.

1. I am writing this Recommendation because Robert C. Rymeck, the Administrative Law Judge to whom this case was originally assigned, left the Department's employ on March 30, 2000.

4. Applicant acquired ownership of the subject property by means of a trustee's deed dated May 17, 1996. Applicant Ex. No. 2.

B. Applicant's Corporate and Financial Structures

5. Applicant was originally incorporated under the General Not For Profit Corporation Act of Illinois on October 24, 1968. Its basic organizational purposes are, per its Articles of Incorporation, to operate counseling centers that offer substance abuse treatments and other related social services. Applicant Ex. No. 4.
6. The Internal Revenue Service determined that applicant qualified for exemption from federal income tax under Section 501(C)(3) of the Internal Revenue Code on July 27, 1971. This exemption remained in full force and effect throughout the 1997 assessment year. Applicant Ex. No. 13.
7. The Department issued applicant an exemption from payment of Illinois Use and related sales taxes on April 24, 1995. The Department based this exemption on its conclusion that applicant is "organized and operated exclusively for charitable purposes," within the meaning of Section 3-5(4) of the Use Tax Act, 35 **ILCS** 105/1 *et seq.* *Id.*
8. Applicant has no capital stock or shareholders. Its fiscal year begins July 1 of each calendar year and ends the ensuing June 30. Applicant Ex. Nos. 14, 15.

9. Applicant obtained program service revenues from the following sources during the fiscal years ended June 30, 1997 and June 30, 1998:

SOURCE	SUM²	% of TOTAL³
Contract Service Fees & Grants		
Government Grants	\$ 5,217,302.00	78%
Other Grants	\$ 8,783.00	<1%
Total Contract Service Fees & Grants	\$ 5,226,085.00	78%
Program Service Fees	\$ 1,453,336.00	22%
Total	\$ 6,679,421.00	

Applicant Ex. Nos. 14, 15

10. Applicant's program service expenses for the same periods were as follows:

EXPENSE	SUM	% of TOTAL
State Funded Methadone Treatment Program – Chicago	\$ 4,490,172.00	66%
State Funded Methadone Treatment Program – Des Plaines	\$ 512,723.00	8%
State Funded Methadone Treatment Program – Aurora	\$ 222,838.00	3%
State Funded Drug Free Program – General	\$ 40,784.00	1%
State Funded Drug Free Program – Women	\$ 18,141.00	<1%
DCFS Initiative	\$ 43,486.00	1%
DCFS Case Coordination	\$ 70,868.00	1%

2. The figures shown on the charts are derived from the financial statements admitted as Applicant Ex. Nos. 14 and 15. These statements present applicant's financial structure on the basis of fiscal, rather than calendar, years. The Property Tax Code, however, defines the term "year" as meaning "calendar year" (35 ILCS 200/1-155). Because applicant's fiscal year (July 1 through June 30) does not conform to a "calendar year" (January 1 through December 31), it is necessary to present applicant's fiscal structure on the basis of combined figures for its 1997 and 1998 fiscal years. Thus, for example, \$5,217,302.00 in revenues from contract service fees and grants attributable to governmental sources is equal to the sum of \$2,511,648.00 (1997 governmental contract revenue) + \$2,705,654.00 (1998 governmental contract revenue).

3. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues shown on the last line of the second column. Thus, \$5,217,302.00/\$6,679,421.00=.7811 (rounded four places past the decimal) or 78%.

EXPENSE (CONT'D)	SUM	% of TOTAL
Case Management	\$ 37,685.00	<1%
HIV Counseling & Testing	\$ 97,963.00	1%
Private Program	\$ 276,884.00	4%
Private Methadone	\$ 335,883.00	5%
General Therapy	\$ 36,423.00	<1%
Adolescent Therapy	\$ 1,244.00	<1%
Intensive Outpatient	\$ 46,257.00	<1%
Toxicology Tests	\$ 136,785.00	2%
Project Success	\$ (484.00)	<1%
CDOH	\$ 77,496.00	1%
Criminal Justice	\$ 208,293.00	3%
New Development	\$ 146,317.00	2%
Chicago Christian Industrial League	\$ 5,977.00	<1%
TOTAL	\$ 6,805,735.00	

Id.

C. Applicant's Operations

11. Applicant provided substance abuse counseling and other related social services to over 700 clients during the 1997 assessment year. Approximately 85% of its clients came from a substance abuse treatment program funded by the Illinois Department of Alcoholism and Substance Abuse (hereinafter "DASA"). The remaining 15% were either self-pay clients (13%) or referrals received pursuant to a contract for services with the United States Probation Office (2%). Applicant Ex. Nos. 8, 9, 10, 11, 12.
12. Applicant received funding from DASA pursuant to contracts which stated in essence that applicant was to provide substance abuse treatment

services in exchange for the payment of two sums certain⁴ from DASA and the Illinois Department of Children and Family Services (hereinafter “DCFS”). Applicant Ex. Nos. 9, 10.

13. These contracts further specified that applicant was to provide services in the following program areas: (a) methadone treatment; (b) early intervention services (testing, counseling, etc.) for those who inject drugs and others at risk of contracting the HIV virus; (c) substance abuse counseling for adults; (d) substance abuse counseling for women; and (e) case management.⁵ *Id.*
14. Said contracts additionally provided, *inter alia*, that applicant was to:
 - adhere to a service projection summary which defines the precise amount of client or staff hours that applicant is required to devote to each program;
 - accept certain fixed hourly rates of payment for providing case management services;
 - provide the HIV early intervention services according to certain protocols established by the Illinois Department of Public Health;
 - deliver such early intervention services only to those individuals already admitted to substance abuse treatment at a DASA-funded treatment facility;

4. The sum certain for the fiscal year ended June 30, 1997 was \$1,909,114.00; that for the fiscal year ended June 30, 1998 was \$1,671,596.00. Applicant Ex. Nos. 9,10.

5. For further details about these services, *see*, Applicant Ex. No. 9, Ex. A.

- make blood drawing services available no less than 4 hours per week;
- use the funding that DASA and DCFS provide for substance abuse treatments for no purpose other than servicing DCFS referrals;
- abide by certain other spending restrictions, including ones which specified that: (a) contract monies were to be used as payments of last resort; and, (b) applicant was to establish eligibility, billing and collection systems which assured that persons entitled to other insurance benefits were reimbursed therefrom and that clients paid in accordance with their respective abilities to pay;
- give priority in admissions to certain specifically delineated population groups, such as injecting drug users, pregnant women and DCFS referrals;
- comply with all applicable state and federal laws pertaining to non-discrimination in the provision of its services and its administrative practices;
- ensure that all of its advertisements, leaflets, announcements, etc. contain acknowledgments indicating that part or all of the funding for its programs comes from DASA and, where appropriate, the federal government; and,
- adhere to and comply with certain very strict reporting and auditing requirements that DASA imposed.

Applicant Ex. Nos. 9, 10.

15. Applicant's contract with the United States Parole Office stated that it was to provide supervisory aftercare services to federal defendants and offenders in exchange for a payment not that did not exceed \$60,000. These services included, *inter alia*, conducting group, family and individual counseling sessions, completing psychological evaluations and other related reports, collecting urine specimens and providing methadone treatments. Applicant Ex. No. 11.⁶

D. Applicant's Use of the Subject Property

16. Applicant began the process of adapting and developing the subject property for uses connected with its substance abuse treatment programs immediately after obtaining its ownership interest therein on May 17, 1996. It actually began construction of necessary building improvement adaptations on January 1, 1996 and continued that process through April 1, 1997. Dept. Group Ex. No. 1, Doc. A; Applicant Ex. Nos. 18, 19, 20, 22, 23, 24, 24A, 25.
17. Applicant assumed occupancy of the building improvement as of April 1, 1997. Its post-occupancy uses of said improvement were as follows:

% of IMPROVEMENT	USE
82%	Case management offices, group counseling rooms and other uses associated with applicant's substance abuse treatment programs.
16%	Leased to unrelated commercial tenant

Id.

CONCLUSIONS OF LAW:

6. For further details about this contract, *see*, Applicant Ex. No. 11.

An examination of the record establishes that this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 1997 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property was not “actually and exclusively used for charitable or beneficent purposes,” as required by 35 ILCS 200/15-65 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, (35 ILCS 200/1-1 *et seq.*). The provisions of that statute which govern disposition of this case are found in Sections 200/15-65(a) and 15-65(c). Those provisions state, in pertinent part, that:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

(c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i)

the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services ..[.]

35 ILCS 200/15-65.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

Here, the relevant statutory exemptions pertain to "institutions of public charity" (Section 200/15-65(a)) and "facilities related to the goals of educational, social and physical development" (Section 200/15-65(c)). The statutory requirements for exemption under both provisions are, for present purposes,⁷ exempt ownership and exempt use. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Korzen"); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4th Dist. 1987). Only the latter requirement is at issue herein, as the instant denial was predicated solely on lack of exempt use. Dept. Ex. No. 2. Therefore, I shall forego further discussion of the exempt ownership requirement and focus all remaining analysis on the issue of exempt use.

7. There is a minor technical difference in the ownership requirements imposed by Sections 15-65(a) and 15-65(c). The former requires that the property in question be owned by an "institution of public charity" (Korzen, *supra*), while the latter mandates that the property be owned by an "old people's home" or other "qualified entity" (Fairview Haven, *supra*). Because the instant denial was not predicated on lack of exempt ownership, this technical distinction is not germane to the outcome herein.

The first part of that analysis involves defining the statutory terms “exclusively used” and “for charitable or beneficent purposes.” The former, when used in Section 200/15-65 and other property tax exemption statutes, means the “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). The latter refers to uses that fall within the legal definition of “charity,” which is “a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.” Crerar v. Williams, 145 Ill. 625, 643 (1893).

Modern courts have identified five distinctive characteristics that implement this definition. See, Korzen, *supra*, at 157. Not all of these characteristics⁸ have a direct impact on the precise question presented herein, which is whether the subject property was “exclusively used” for charitable purposes during the 1997 tax year. Those that do, however, require that the charitable use involve funds derived mainly from public or private charity. Korzen at 157.

Applicant’s contracts with DASA and the United States Parole Office provided 78% of its program service revenues during 1997. Applicant obtained these revenues from contracts that it negotiated at arm’s length with DASA and the United States Parole Office. These agencies, and not applicant, defined the class of persons who could receive the services applicant contracted to provide. They also established the fee schedules and service projection summaries under which applicant received payment.

8. The five characteristics are that “institutions of public charity:” (1) have no capital stock or shareholders; (2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters; (3) dispense charity to all who need and apply for it; (4) do not provide gain or profit in a private sense to any person connected with it; and, (5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Korzen, *supra*, at 157.

Applicant received the benefit of all payments guaranteed by these schedules and summaries as part of the consideration it gave for the contracts. It likewise accepted any and all limitations associated with receiving payments under such schedules and summaries, including the one which specifically stated that applicant could only service a very limited class of persons, that being DCFS referrals, with the funds it received for providing substance abuse treatment services to that agency. Under these circumstances, I conclude that applicant was doing business with, rather than dispensing charity to, the governmental agencies with which it contracted during 1997. Therefore, any uses of the subject property which furthered the discharge of applicant's contractual obligations to those agencies fail to qualify as "charitable" under Section 15-65.

Applicant did nevertheless provide some non-contractual services to self-paying clients during 1997. However, the clients who received these services accounted for only 13% of applicant's total census throughout that tax year. Thus, whatever "charitable" uses applicant may have effectuated by reducing or waiving fees for this 13% was but an incidental by-product of the non-exempt business uses associated with the remaining 87%.

Incidental acts of charity or incidental charitable uses are legally insufficient to establish that the property in question is "exclusively used for charitable... purposes," as required by Section 15-65. Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association, 158 Ill. App. 3d 794 (3rd Dist. 1987); Albion Ruritan Club v. Department of Revenue, 209 Ill. App. 3d 914 (5th Dist. 1991) Therefore, the Department's determination denying the subject property exemption from 1997 real estate taxes on grounds that said property was not primarily used for charitable purposes should be affirmed.

Applicant attempts to defeat this conclusion by pointing out that the Korzen factors are not rigid requirements, but rather guidelines to be considered with an overall focus on whether the applicant serves the public interest and lessens the State's burden.

DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). The myriad of social ills and governmental burdens imposed by substance abusers (criminal activity, dysfunctional families, etc.) have been very well documented in these times. Thus, administrative notice thereof dispenses with the necessity to recount their grave consequences. However, it is applicant's primary, actual use of the subject property, and *not* the therapeutic nature of the services it dispenses thereat, that is determinative of the outcome herein. *Accord*, Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993); Skil Corp. v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Dev. Corp. v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994).

I have previously concluded that applicant used the subject property primarily as a venue for discharging its contractual responsibilities to the governmental agencies that contracted for its services throughout 1997. Given this conclusion, applicant's exempt use argument can be reduced to the circular assertion that it is relieving the government of a burden merely by maintaining a business relationship with the government.

The primary focus of that relationship was, precisely stated, to provide methadone treatments to the limited class of persons who fell within the very restrictive parameters of applicant's contracts with DASA.⁹ As such, all uses associated with this and applicant's other similarly-structured substance abuse treatment contracts fail to satisfy the definitional requirement of benefiting "an indefinite number of persons...[.]" Crerar v. Williams, *supra*.

With respect to the exemption set forth in Section 15-65(c), it is briefly noted that although applicant is exempt under Section 501(c)(3) of the Internal Revenue Code, its bylaws are totally devoid of any policy providing for a waiver or reduction of any fees

9. See, audited financial statements admitted as Applicant Ex. Nos. 14 and 15, which collectively indicate that 66% of applicant's program service expenses for the period in question were attributable to the State-funded methadone treatment program. *See also, infra*, at p. 4.

that it may charge. *See*, Applicant Ex. No. 4A. More importantly, the subject property was not “actually and exclusively used for charitable or beneficent purposes,” as required by the paragraph of Section 15-65,¹⁰ for the reasons set forth above. Therefore, said property does not qualify for exemption from 1997 real estate taxes under Section 15-65(c) of the Property Tax Code.

In light of the above conclusions, I find it unnecessary to engage in protracted analysis of applicant’s remaining contentions, which pertain to developing the subject property for exempt use and partial exempt use. Applicant derives these arguments from the facts that it: (1) was actively engaged in preparing the building improvement for its own uses from January 1, 1996 through April 1, 1997; (2) could not assume occupancy of said improvement until April 1, 1997 because of this construction; and (3) was leasing 16% of the building to a non-related commercial tenant after it assumed occupancy.

These arguments presuppose that the subject property was being adapted and developed for one or more specifically identifiable exempt uses during the pertinent period (Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987)); or, that specifically identifiable portions of said property were actually and exclusively being used for exempt purposes during the tax year in question (Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971)).

Neither of these scenarios are present herein because applicant’s post-occupancy uses fail to qualify as “exclusively charitable” within the meaning of Section 15-65. Accordingly, the facts pertaining to applicant’s pre-occupancy construction project, its actual date of occupancy and its post-occupancy leasing have no legal significance

10. The first paragraph of Section 15-65, which applies to subsection (c) and all other subsections which fall thereunder states that:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit ...[.]

35 ILCS 200/15-65 (emphasis added).

herein. On this basis, and in conformity with the entire preceding analysis, I recommend that the Department's initial determination in this matter be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that real estate identified by Cook County Parcel Index Numbers 17-04-444-004, 17-04-444-005, 17-04-444-006 and 17-04-444-010 not be exempt from 1997 real estate taxes under Sections 15-65(a) and 15-65(c) of the Property Tax Code.

August 7, 2000
Date

Alan I. Marcus
Administrative Law Judge